## REMARKS

Review and reconsideration of the non-final Office Action dated March 10, 2005, is respectfully requested in view of the above amendments and the following remarks.

### Acknowledgement of Documents

The Examiner acknowledges receipt of the Preliminary Amendment filed February 19, 2002.

However, the **Second Preliminary Amendment** filed October 15, 2004, attending to formalities and canceling Claim 10 (Claim 11 having been previously canceled), was either not entered or entered and overlooked.

Accordingly, Applicants request that the Second Preliminary Amendment be disregarded, and instead repeat, in this Amendment A, the same amendments to the claims presented in the Second Preliminary Amendment, including cancellation of Claim 10.

### Office Action

Turning to the Office Action, the paragraphing of the Examiner is adopted.

### Claim Rejections - 35 U.S.C. §112 (first paragraph)

Claims 1-10 and 12-14 are rejected under 35 U.S.C. §112, first paragraph, because of the following terms:

i. Claim 1, "hydrogel or mixture of hydrogels"

In response, Applicants more specifically define the hydrogels used in the present invention based on page 4, line 28-32 of the specification.

ii. Claim 2, the term "extract" in the expression "extract of acerola fruits Malpighia punidifolia"

In response, Applicants amend Claim 2 to define an extract of acerola fruits as a powdered product stemming from an aqueous extract comprising vitamin C, vitamin A, thiamine, riboflavine, niacine, phosphorus, iron, calcium. Support for this amendment can be found in the specification at page 8, lines 3-7).

iii. Claim 2 appears to be in error with respect to the letter (g) which reference is not supported by the instant specification.

In response, Applicants delete reference to letter (g). Applicants further amend the amount to 1 to 20 wt.%, based on page 3, line 21 of the specification.

iv. Claim 6, there is no antecedent basis for the term "aspertine acid" as well as there is no compound noted in the specification as "aspertinic acid".

Applicants respectfully submit that this is a translation error, and that aspartic acid was intended.

It is well known that proteins are the major constituents of insect cuticle; they make up ca. 50% of the dry weight of the cuticle. Proteins of soft cuticle ("membrane") usually contain more **aspartic acid**, glutamic acid, histidine, lysine and tyrosine and are more hydrophilic than those of hard cuticles.

Accordingly, entry of the correction is respectfully requested.

v. Claim 9, the term "extract" or "extracts" throughout the claim

In response, Applicants respectfully submit that (a) Claim 9 should be allowed by virtue of its dependency from allowable Claim 1, and (b) any person working in the cosmetic field is able to purchase these commercially available plant extracts. Applicants attach for the convenience of the Examiner copies of pages from the International Buyers' Guide 2000, Vol. 2, pages 4 and 276-297 which list an excerpt of the extracts available on the market. Hence, since the person of ordinary skill can easily procure these well known ingredients, it is not necessary for the present inventor to know or disclose the specific compositions or methods of manufacture of these ingredients.

Withdrawal of the rejection of Claim 9 is respectfully requested.

vi. Claim 10 is not supported by the instant specification for a composition *per se*.

In response, Applicants point out that Claim 10 had been canceled in Second Preliminary Amendment, apparently not entered, thus canceled with the present amendment.

**Claim Rejections - 35 U.S.C. 112 (second paragraph)**

Claims 1-10 and 12-14 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to

particularly point and distinctly claim the subject matter which Applicants regard as the invention with respect to the terms:

a. Claims 8 and 9 recite broader and narrower ranges.

In response, Applicants remove parenthesis, so that the claim only has one set of ranges.

b. Claims 1-10 and 12-14 are vague and indefinite by the terms "extract", "extracts" or "hydrogel" because the terms, in and of itself, do not adequately delineate its metes and bounds.

In response, Applicants have further clarified the term "hydrogel" in the claims, and as discussed above, use commercially available extracts. Applicants need not know how to manufacture these extracts if they are readily available to those working in the art.

Accordingly, withdrawal of the rejection is respectfully requested.

**Claim Rejections - 35 U.S.C. 102(b)**

Claim 10 is rejected under 35 U.S.C. 102(b) as anticipated by Runge et al, US 6,235,315.

Applicants respectfully submit that, claim 10 having been previously canceled, this rejection is moot.

Nevertheless, since there is recitation of "tomato extract" in Claim 9, Applicants would point out that Runge et al teaches a process for the special lycopene with a degree of crystallinity of >20%. The only connection with the present invention is the content of tomato extract (which contains

lycopene). But Claim 9 depends from Claim 1 and thus the tomato extract must be present in addition to the list of other ingredients. This long list of ingredients not being suggested in Runge et al, this reference has no relevance to the present invention.

Withdrawal of the rejection is respectfully requested.

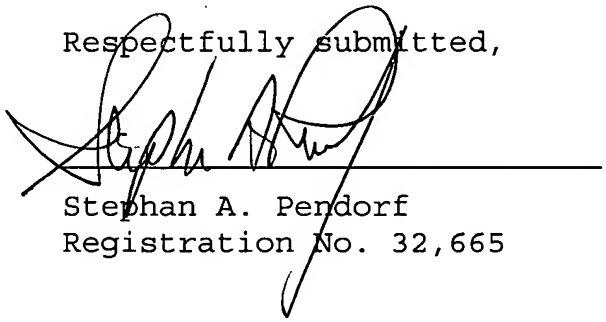
**Specification**

The Examiner advises that the specification has not been checked to the extent necessary to determine the presence of all possible minor errors and requests Applicants' cooperation in correcting any errors of which Applicants may become aware.

Applicants amend a translation error, using the old format for amendment, since the present specification has no paragraph numbering.

Favorable consideration and early issuance of the Notice of Allowance are respectfully requested. Should further issues remain prior to allowance, the Examiner is respectfully requested to contact the undersigned at the indicated telephone number.

Respectfully submitted,



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Date: **July 11, 2005**

Attorney Docket No.: 3975.007

**CERTIFICATE OF MAILING AND AUTHORIZATION TO CHARGE**

I hereby certify that the foregoing AMENDMENT A, for U.S. Application No. 10/049,770 filed February 19, 2002, was deposited in first class U.S. mail, with sufficient postage, addressed to: **Mail Stop Amendment,** Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **July 11, 2005**.

The Commissioner is hereby authorized to charge any additional fees which may be required at any time during the prosecution of this application, except for the Issue Fee, without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.


Stephan A. Pendorf